



6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R03-OAR-2015-0666; FRL-9942-59-Region 3]**

**Approval and Promulgation of Air Quality Implementation Plans; District of Columbia; Regulation to Limit Nitrogen Oxides Emissions from Large Non-Electric Generating Units**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving a State Implementation Plan (SIP) revision submitted by the District of Columbia. The revision caps emissions of nitrogen oxides (NO<sub>x</sub>) from large non-electric generating units (non-EGUs) to meet the requirements of EPA's NO<sub>x</sub> SIP Call. EPA is approving this revision to cap emissions of NO<sub>x</sub> from non-EGUs in accordance with the requirements of the Clean Air Act (CAA).

**DATES:** This final rule is effective on **[insert date 30 days after date of publication in the Federal Register]**.

**ADDRESSES:** EPA has established a docket for this action under Docket ID Number EPA-R03-OAR-2015-0666. All documents in the docket are listed in the [www.regulations.gov](http://www.regulations.gov) website. Although listed in the electronic docket, some information is not publicly available, i.e., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available through [www.regulations.gov](http://www.regulations.gov) or may be viewed during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street,

Philadelphia, Pennsylvania 19103. Copies of the District submittal are available at the District of Columbia. Department of Energy and Environment, Air Quality Division, 1200 1st Street NE., 5th floor, Washington, DC 20002.

**FOR FURTHER INFORMATION CONTACT:** Marilyn Powers, (215) 814-2308, or by e-mail at [powers.marilyn@epa.gov](mailto:powers.marilyn@epa.gov).

## **SUPPLEMENTARY INFORMATION:**

### **I. Background**

On November 19, 2015 (80 FR 72406), EPA published a notice of proposed rulemaking (NPR) for the District of Columbia. In the NPR, EPA proposed approval of the District's regulation to cap NO<sub>x</sub> emissions from large non-EGUs to meet the requirements of EPA's NO<sub>x</sub> SIP Call.

The formal SIP revision was submitted by the District of Columbia on June 19, 2015.

### **II. Summary of SIP Revision**

On June 19, 2015, the District Department of the Environment (DOEE) submitted a SIP revision that addresses NO<sub>x</sub> reductions from its non-EGUs to meet its obligations under the NO<sub>x</sub> SIP Call. The submission also removes, from the District's SIP, regulation Title 20 DCMR Chapter 10 - Nitrogen Oxides Emissions Budget Program. Sections 1000 through 1013 of 20 DCMR Chapter 10 comprised the District's Ozone Transport Commission (OTC) NO<sub>x</sub> Budget Program, which preceded the NO<sub>x</sub> SIP Call trading program, and section 1014 of 20 DCMR Chapter 10 incorporated by reference the trading program established under the NO<sub>x</sub> SIP Call. Both the OTC and the NO<sub>x</sub> SIP Call trading programs have been discontinued, and the NO<sub>x</sub> SIP Call requirements for electric generating units (EGUs) are now being met under other trading

programs.<sup>1</sup> The June 19, 2015 submission removes the existing Chapter 10 from the District's SIP, and replaces it with a new Chapter 10. The new Chapter 10, entitled Air Quality – Non-EGU Limits on Nitrogen Oxides Emissions, establishes an ozone season NOx emissions cap of 25 tons on applicable non-EGUs in the District, and allocates the cap to the non-EGUs located at the U. S. General Services Administration Central Heating and Refrigeration Plant, with a reallocation required whenever a new non-EGU in the District becomes subject to the NOx SIP Call.<sup>2</sup> The regulation also requires continuous emissions monitoring of NOx emissions, recordkeeping and reporting pursuant to 40 CFR part 75 to ensure compliance with the District's non-EGU emissions cap.

Other specific requirements of the District's SIP submittal and the rationale for EPA's proposed action are explained in the NPR and will not be restated here. No public comments were received on the NPR.

### **III. Final Action**

EPA is approving the District of Columbia's June 19, 2015 submittal, which establishes an ozone season NOx limit of 25 tons for non-EGUs, as a revision to the District's SIP. The submission removes, from the District's SIP, regulation Title 20 DCMR Chapter 10 - Nitrogen Oxides Emissions Budget Program, and replaces it with new Chapter 10 - Non-EGU Limits on Nitrogen Oxides Emissions.

### **IV. Incorporation by Reference**

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<sup>1</sup> There are presently no EGUs in the District.

<sup>2</sup> Applicable non-EGUs are the non-EGUs that were subject to the NOx SIP Call, including large industrial boilers and turbines with a maximum rated heat input capacity greater than 250 million British thermal units per hour (mmBtu/hr).

In this rulemaking action, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of revised District of Columbia regulation Title 20 DCMR, Environment, Chapter 10 – Air Quality – Non-EGU limits on Nitrogen Oxides Emissions, and the revised definition of “Fossil fuel-fired” in Chapter 1, General Rules. The EPA has made, and will continue to make, these documents generally available electronically through [www.regulations.gov](http://www.regulations.gov) and/or may be viewed at the appropriate EPA office (see the ADDRESSES section of this preamble for more information).

## **V. Statutory and Executive Order Reviews**

### *A. General Requirements*

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA’s role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);

- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rulemaking action does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

#### *B. Submission to Congress and the Comptroller General*

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory

Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

### *C. Petitions for Judicial Review*

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[insert date 60 days after date of publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action.

This action approving the District of Columbia SIP submittal to cap NO<sub>x</sub> emissions from large non-EGUs may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: February 4, 2016.

Shawn M. Garvin,  
Regional Administrator,  
Region III.

40 CFR part 52 is amended as follows:

## **PART 52 – APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 et seq.

### **Subpart J—District of Columbia**

2. In § 52.470, the table in paragraph (c) is amended by:

a. Revising the entry for “Section 199.”

b. Removing “Chapter 10 Nitrogen Oxides Emissions Budget Program (Sections 1000 – 1099).”

c. Adding a new Chapter 10 entitled “Air Quality – Non-EGU Limits on Nitrogen Oxides Emissions.”

The revision and addition read as follows:

#### **§52.470 Identification of plan.**

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(c) \* \* \*

#### **EPA-Approved Regulations and Statutes in the District of Columbia SIP**

<b>State citation</b>	<b>Title/subject</b>	<b>State effective date</b>	<b>EPA approval date</b>	<b>Additional explanation</b>
<b>District of Columbia Municipal Regulations (DCMR), Title 20 - Environment</b>				
<b>Chapter 1 General</b>				
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Section 199	Definitions and Abbreviations	03/08/15	[insert date of publication in the Federal Register], [insert Federal Register citation]	Amended definition of “Fossil fuel-fired”
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<b>State citation</b>	<b>Title/subject</b>	<b>State effective date</b>	<b>EPA approval date</b>	<b>Additional explanation</b>
<b>Chapter 10 Air Quality – Non-EGU Limits on Nitrogen Oxides Emissions</b>				
Section 1000	Applicability	03/08/15	[insert date of publication in the Federal Register], [insert Federal Register citation]	
Section 1001	NOx Emissions Budget and NOx Limit Per Source	03/08/15	[insert date of publication in the Federal Register], [insert Federal Register citation]	
Section 1002	Emissions Monitoring	03/08/15	[insert date of publication in the Federal Register], [insert Federal Register citation]	
Section 1003	Record-Keeping and Reporting	03/08/15	[insert date of publication in the Federal Register], [insert Federal Register citation]	
Section 1004	Excess Emissions	03/08/15	[insert date of	

<b>State citation</b>	<b>Title/subject</b>	<b>State effective date</b>	<b>EPA approval date</b>	<b>Additional explanation</b>
			<b>publication in the Federal Register], [insert Federal Register citation]</b>	
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